

**In the United States District Court
For the Southern District of Georgia
Brunswick Division**

JAMES EDWARD LEWIS,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

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CIVIL ACTION NO.: 2:19-cv-79

ORDER

Before the Court are Plaintiff's Objections to the Magistrate Judge's October 14, 2021 Report and Recommendation. Dkt. No. 66.¹ The Magistrate Judge recommended dismissal without prejudice of Plaintiff's Complaint for failure to follow a Court Order and failure to respond to Defendants' motion to dismiss.² Dkt. No. 64. For the reasons set forth below, the Court **CONCURS** with the Magistrate Judge's Report and Recommendation. The Court **ADOPTS** the Magistrate Judge's Report and Recommendation as the opinion of the Court, **GRANTS as unopposed** Defendants' Motion

¹ Plaintiff filed an affidavit in support of his emotional distress claim. However, this was signed prior to the issuance of the Report and does not appear responsive to it. Dkt. No. 65.

² Plaintiff insists Defendants filed a motion for summary judgment. Dkt. No. 66. This is plainly incorrect—Defendants moved to dismiss Plaintiff's claim under Federal Rules of Civil Procedure 12(b)(1) and (6) and for failure to exhaust. Dkt. No. 37.

to Dismiss, **DISMISSES without prejudice** Plaintiff's Complaint for failure to follow this Court's Order, **DIRECTS** the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENIES** Plaintiff *in forma pauperis* status on appeal.

I. Plaintiff's Objections to the Magistrate Judge's Recommendation of Dismissal

The Magistrate Judge recommended dismissal of Plaintiff's Complaint for failure to follow a Court Order. Dkt. No. 64. Plaintiff failed to respond to Defendants' motion to dismiss or follow the Court's Order requiring him to do so. Dkt. No. 38; Dkt. No. 53 at 2. Indeed, the Magistrate Judge only recommended dismissal after granting three motions for extensions, providing Plaintiff almost five months to respond, and after Plaintiff failed to respond when his last motion for extension was denied. See Dkt. No. 61 at 1-2 (describing the extensions Plaintiff received).

Plaintiff makes several Objections to this portion of the Magistrate Judge's Report, all of which are unpersuasive. Dkt. No. 66. First, Plaintiff argues the Magistrate Judge failed to consider the impact of the COVID-19 pandemic on his ability to respond. Id. at 1. Plaintiff previously raised such concerns, see e.g., Dkt. No. 40 at 1, and the Magistrate Judge accounted for those concerns by providing Plaintiff an extra three and a

half months to respond. Similarly, the Magistrate Judge accounted for Plaintiff's frequent transfers among facilities by issuing extensions. Dkt. No. 66 at 2. Moreover, Plaintiff remained at FCI Jesup from the time Defendants' Motion to Dismiss was filed on April 16, 2021 to July 23, 2021, and provides no credible explanation for why he failed to respond to Defendants' motion to dismiss during this time frame despite being ordered to do so. Dkt. No. 51.

Plaintiff also argues at length that his case should not have been dismissed with prejudice. Dkt. No. 66 at 2-3. The Magistrate Judge recommended dismissal *without* prejudice. Dkt. No. 64 at 1. Thus, any arguments related to whether dismissal with prejudice was appropriate, are not material. Any contention the Magistrate Judge abused his discretion recommending dismissal without prejudice or should have applied a lesser sanction, is also unpersuasive. Dkt. No. 66 at 3. Plaintiff's citations do not demonstrate a lesser sanction should be imposed in these circumstances. Id. This is especially true because Plaintiff failed to respond to Defendants' motion to dismiss even after his September 20, 2021 motion for extension was denied by the Magistrate and the undersigned.³ Dkt. Nos. 60, 63.

³ Plaintiff asserts his "Notice of Appeal" to the Magistrate Judge's September 21, 2021 Order denying his motion for an extension

II. Plaintiff's Objections to the Magistrate Judge Recommending the Court Deny Him Leave to Appeal in *Forma Pauperis*

Plaintiff objects to the Magistrate Judge's recommendation to deny him leave to appeal *in forma pauperis*. Dkt. No. 66 at 4-5. Plaintiff argues because his Complaint was not rejected when screened as provided in the Prison Litigation Reform Act ("PLRA"), he should be permitted to appeal *in forma pauperis*.

Id. However, the Plaintiff misunderstands the Magistrate Judge's recommendation. The fact that Plaintiff was initially granted *in forma pauperis* status in this case, does not mean he automatically retains that status on appeal. Rather he must demonstrate non-frivolous arguments he intends to raise to be afforded *in forma pauperis* status on appeal. The Magistrate Judge determined Plaintiff could not raise any non-frivolous basis for an appeal in these circumstances. Dkt. No. 64 at 5. Id. at 6-7. Plaintiff has still not pointed to any non-frivolous issues he intends to raise on appeal. Thus, Plaintiff's Objections on this point are **OVERRULED**.⁴

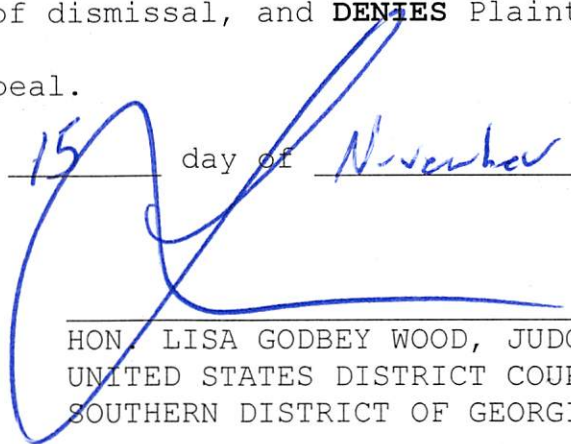
was intended to be an appeal to the Eleventh Circuit Court of Appeals. Dkt. No. 66 at 4, 6. Plaintiff's appeal was docketed as an "Appeal of Magistrate Judge Decision to District Court" and there is no indication in the document to whom Plaintiff was appealing. Dkt. No. 61. If Plaintiff intended to appeal to the Eleventh Circuit at that time, his efforts would have been premature as no final order had been entered. More importantly, Plaintiff remains free to pursue an appeal of this decision dismissing his case.

⁴ Plaintiff also objects to past rulings by the Magistrate Judge. Dkt. No. 66 at 8-9. Plaintiff's objections to the prior rulings are untimely, and Plaintiff fails to explain why he could not raise the

After an independent, de novo review and considering Plaintiff's Objections, the Court agrees with the Magistrate Judge's Recommendation. Plaintiff failed to respond to Defendants' motion to dismiss as ordered by this Court, despite ample time do so and several extensions. Plaintiff still has not responded to Defendants' motion to dismiss.

Thus, the Court **CONCURS** with the Magistrate Judge's Report and Recommendation, **ADOPTS** the Magistrate Judge's Report and Recommendation as the opinion of the Court, **GRANTS as unopposed** Defendants' Motion to Dismiss, **DISMISSES without prejudice** Plaintiff's Complaint for failure to follow this Court's Order, **DIRECTS** the Clerk of Court to **CLOSE** this case and enter the appropriate judgment of dismissal, and **DENIES** Plaintiff *in forma pauperis* status on appeal.

SO ORDERED, this 15 day of November, 2021.



HON. LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

objections sooner. The objections to prior rulings will not be addressed further.